

Squire, Sanders & Dempsey L.L.P.
Nathan Lane III (State Bar # 50961)
Joseph A. Meckes (State Bar # 190279)
One Maritime Plaza, Suite 300
San Francisco, California 94111-3492
Telephone: +1.415.954.0200
Facsimile: +1.415.393.9887
Email: NLane@ssd.com
JMeckes@ssd.com

Attorneys for Plaintiff
IZUMI OHKUBO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IZUMI OHKUBO,

Plaintiff,

vs.

ANTARA BIOSCIENCES, INC.,
MARC R. LABGOLD and DANA
ICHINOTSUBO,

Defendants.

Case No. C07 06354 JW

**MOTION FOR ADMINISTRATIVE
RELIEF; REQUEST TO FILE SUR-REPLY
AND OBJECTIONS TO EVIDENCE
PRESENTED IN REPLY BRIEF**
Civ. L. R. 7-11

Judge: Hon. James Ware

1 **I. INTRODUCTION**

2 In Defendants' Reply Brief in Support of their Motion to Dismiss Plaintiff Izumi
3 Ohkubo's Complaint, Defendants present numerous unsupported factual assertions and new
4 arguments not found in their Opening Brief. To briefly address these issues, Mr. Ohkubo
5 respectfully requests that the Court permit Mr. Ohkubo to file the attached 5 and one-half page
6 Sur-Reply and Objections to Evidence (attached hereto as Exhibit A), the attached Rebuttal
7 Declaration of Izumi Ohkubo (attached hereto as Exhibit B) and the Declaration of Miharu
8 Furihata (attached hereto as Exhibit C), which, together constitute less than eight pages of text.
9 Counsel for Mr. Ohkubo requested that Defendants stipulate to this MAR, but Defendants refused.
10 Declaration of Joseph A. Meckes ("Meckes MAR Decl.") at ¶8 submitted herewith

11 **II. THERE IS GOOD CAUSE FOR THE COURT TO CONSIDER MR. OHKUBO'S**
12 **SUR-REPLY**

13 Defendant's Memorandum of Points and Authorities in support of their Motion to Dismiss
14 was approximately 10 and a half pages long and contained virtually no facts to support dismissal
15 for improper venue or *forum non conveniens*, as Defendants requested. Meckes MAR Decl. at
16 ¶2 submitted herewith. Although Defendants argued that the parties' agreement contained a
17 mandatory forum selection provision, they did not explain how this provision (which provides
18 solely for jurisdiction) can be considered mandatory under applicable Ninth Circuit law (which
19 required forum selection provisions to contain clear language indicating exclusivity). *Id.* at ¶3.
20 Moreover, Defendants argued that the Court should dismiss under the doctrine of *forum non*
21 *conveniens* because there "critical" evidence was located in Japan but made no effort to describe
22 the nature of the alleged evidence or to explain why it was critical. *Id.* at ¶4.

23 After receiving Mr. Ohkubo's Opposition Memorandum, Defendants have set out to cure
24 these deficiencies, primarily by making factual assertions and arguments that should have been
25 made in their Opening Brief, if at all. *Id.* at ¶5. Defendants provide no evidentiary support for
26 most of their factual assertions, many of which are contradicted by documents Defendants
27 themselves created or by the very pleadings Defendants cite. *Id.* at ¶6. In a footnote, Defendants
28 also apparently challenge the authenticity of the Investment Contract by claiming that there is a

1 “actual” contract between the parties that is different from the Investment Agreement that they
2 are relying on in support of their Motion--but without providing the Court a copy of this alleged
3 “actual” agreement. *Id.* at 7.

4 In his proposed Sur-Reply, Mr. Ohkubo limits his brief discussion to five matters: (1)
5 Defendants’ new, unsupported factual contention that someone other than Defendants drafted the
6 parties’ Investment Contract, (2) Defendants’ new argument that Article 9 of the Investment
7 Contract contains language making it a mandatory forum selection clause, (3) Defendants’ new
8 argument and factual assertions why Toshiaki Suzuki is a critical witness, (4) Defendants new
9 position that the “actual” contract between Mr. Ohkubo and the Defendants is not the same
10 Investment Contract that they are relying on in support of their motion, and (5) Mr. Ohkubo’s
11 objections to various factually incorrect or unsupported assertions. Although there are numerous
12 other new arguments that should have been presented by Defendants’ in their Opening Brief,
13 these core issues go to the heart of Defendants’ Motion and could have been easily addressed by
14 Mr. Ohkubo in his Opposition Brief had Defendants not saved these facts and arguments for
15 Reply.

16 Accordingly, for good cause shown, Mr. Ohkubo respectfully requests that the Court
17 permit him to file the attached Sur-Reply and Objections, the Rebuttal Declaration of Izumi
18 Ohkubo and the Declaration of Miharu Furihata. Mr. Ohkubo believes these documents contain
19 information that will be essential to the Court in ruling on the pending Motion.

20 Dated: April 2, 2008

SQUIRE, SANDERS & DEMPSEY, L.L.P.

21 By: _____/s/
22 Joseph A. Meckes
23

24 Attorneys for Plaintiff
25 IZUMI OHKUBO
26
27
28